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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re D.A., a Person Coming Under the
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

J.A.,

Defendant and Appellant.

E035930

(Super.Ct.No. J102122)

OPINION

APPEAL from the Superior Court of Riverside County. Robert M. Padia,
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Konrad S. Lee, under appointment by the Court of Appeal, for Defendant and
Appellant.

William C. Katzenstein, County Counsel, and Julie A. Koons Jarvi, Deputy
County Counsel, for Plaintiff and Respondent.

Harry Zimmerman, under appointment by the Court of Appeal, for Minor.

J.A. (mother) appeals an order denying her petition to modify a prior order terminating reunification services (Welf. & Inst. Code, § 388),¹ and an order terminating parental rights and selecting adoption as the permanent plan for her child (§ 366.26). We affirm, concluding that both orders were appropriate because mother has failed to demonstrate the stability necessary to regain custody and has maintained only a minimal relationship with her child, who has developed an attachment to his adoptive parents.

STATEMENT OF FACTS

Mother gave birth to the child at issue in this dependency action in January 1999, when she was just 15 years old. A year and a half later, in July 2001, mother left the child with a maternal aunt with a letter giving the maternal aunt temporary custody until mother could become more stable. Riverside County Department of Public Social Services (department) quickly learned of this arrangement, interviewed the maternal aunt, and found the child to be happy and comfortable in the home.

The next day, mother and maternal grandmother brought the child into the department's offices, complaining that the maternal aunt did not want the child anymore after the department became involved. Mother explained that she was incapable of caring for the child because she was homeless and had been living on the streets, with friends, and in motels for six months. Mother wanted to keep her child, but was willing to have him placed in a foster home so that she could improve her situation. Maternal

¹ All further statutory references will be to the Welfare and Institutions Code.

grandmother, who had a history of neglect in regard to mother, similarly indicated that she was homeless and unable to care for the child.

As a result of mother's admissions, dependency proceedings were immediately initiated. Rather than detain the child, the department placed the child with the mother in a foster home, a placement that was complicated by the fact that the mother was about to turn 18 and would no longer be eligible for foster care assistance.

A contested jurisdictional hearing was scheduled, but the joint placement soon fell apart as a result of disputes between mother and the foster parents regarding sleeping arrangements and babysitting. As a result, the department filed an amended petition seeking to detain the child in a separate foster home. In September 2001, the juvenile court authorized the separate detention, but ordered frequent and liberal visitation. Shortly thereafter, the court accepted jurisdiction based on the amended petition.

During the first review period, mother resided in a home provided by a transitional living program that assisted young adults in becoming independent. The program included counseling and regular meetings with a case manager. Mother also worked on her GED (general equivalency diploma) and obtained employment at a fast food restaurant. Mother was provided with referrals for parenting classes, but did not enroll.

Visitation was initially inconsistent due to mother's work schedule; however, they quickly settled into regular weekly visitation at the department offices. During the visits, the child went to his mother and sought her attention. At the end of the visits, the child was very tearful.

In March 2002, near the end of the first review period, mother attempted suicide. Mother claimed she did so because she thought she was going to lose her child and she was having problems with her boyfriend. After the suicide attempt, mother began to open up more to her counselor and claimed the experience frightened her too much to ever do it again. By the six-month review hearing, mother's counselor reported that mother was doing much better emotionally and was no longer a suicide risk.

The six-month review hearing was held in April 2002. At the hearing, the department recommended the continuation of reunification services. The juvenile court agreed and ordered services to continue.

During the next six months, mother continued working towards a high school diploma and got a new job with a different fast food chain. Mother completed a parenting course and moved to her own apartment as part of the same transitional living program. A home evaluation was conducted on mother's new apartment and it was deemed appropriate. Mother's mental stability was reportedly good throughout the second review period. Although mother was somewhat resistant to counseling, she indicated that she was comfortable with the counseling and found it to be beneficial.

Mother continued with weekly visitation, where she was appropriate and nurturing toward her child, engaging him in activities and bringing him gifts. The child appeared to enjoy the visits and often did not want staff in the room with them. In mid-August, mother began having unsupervised visits at her apartment. These visits also appeared to go well. At the conclusion of visits, the child would become emotional, crying and fighting to not be put in the car to leave.

The 12-month review hearing was held in October 2002. At the hearing, the department requested authorization for overnight visits and possible placement with mother under a program of family maintenance. The juvenile court continued reunification services and authorized family maintenance after four successful overnight and weekend visits.

Following the 12-month review, the transitional program began to see a deterioration in mother's attitude. Mother stopped regularly attending counseling sessions and program meetings, and left her apartment in disarray.

The change was also evident in mother's visits. Mother was initially provided with several weekend visits that seemed to go well; the child seemed happy and excited to go, and was upset and tearful when he had to leave. Nevertheless, mother said she was not ready to take her child and asked for more time to get stable. In late December 2002, after mother finally secured appropriate childcare, she had a 10-day visit that included the Christmas holiday. However, during this visit, mother's apartment was found to be in disarray. Furthermore, rather than use childcare, mother opted to stay home from work. And there were allegations that mother failed to use an appropriate child seat while transporting the child in a car.

Following the extended visit, mother quit her job, moved out of the transitional program apartment, and stopped visiting her child. Mother moved into a one-bedroom apartment that was paid for through a different program, and moved in with a boyfriend who failed to submit to a background check. As a result of the move, mother was referred to a different therapist, but missed her appointments.

The department began arranging weekly visits at the department offices in February 2003. During February and March, mother cancelled two of the office visits. During the two visits she attended, mother acted appropriately and the child continued his pattern of being excited to see his mother, then getting upset when he had to leave.

In April 2003, as a result of mother's set backs, the department recommended the termination of reunification services and the setting of a section 366.26 hearing. A contested 18-month review hearing was scheduled for May.

During the intervening month, mother regularly attended weekly visits, which continued to go well, although the department noted that the child no longer cried or threw tantrums after the visits and did not even say goodbye very often. Mother claimed she started working another retail job and that she was still working on her GED. However, mother still failed to attend counseling and remained in an inappropriate living arrangement.

At the 18-month review hearing in May 2003, the juvenile court terminated reunification services and set the matter for a section 366.26 hearing, with adoption as the likely permanent plan.

The initial section 366.26 report in August 2003 indicated that mother and child had maintained regular contact, with at least one visit a month. During those visits, mother made little attempt to interact with the child and the child tended to play by himself or with the social worker. On occasion, mother even terminated the visit early. Although, at the last visit, mother was more affectionate toward the child. The child seemed to enjoy the visits, particularly when mother was affectionate with him, and he

was not exhibiting any emotional problems afterwards. At that time, the department indicated that it was looking for a suitable adoptive home.

The section 366.26 hearing was continued to January 2004, requiring an intervening review hearing in November 2003. By the review hearing, it was revealed that mother was pregnant with her second child and due to give birth soon. Mother said she was living with an aunt in Moreno Valley, but would not provide any details. Mother consistently attended monthly visitation, but continued to interact only in a limited manner with the child. The child appeared to enjoy interacting with mother and sought to get her attention in a positive way. Nonetheless, prior to the last visit, the child had to be reassured that his adoptive mother would be waiting for him afterwards. After the visit, the child called out to his adoptive mother as “mommy” and ran to her. The child had been placed with his adoptive family in October 2003 and was doing well.

At the review hearing in November 2003, mother’s attorney requested more visitation, noting that mother wanted to file a section 388 modification petition to have the child placed with her. The juvenile court obliged, ordering more visitation.

Mother’s second child was born shortly after the review hearing. The department filed a dependency petition on the second child as well, claiming that mother had neglected her first child, failed to benefit from prior services, and had an unresolved history of domestic violence with the father of her second child. Nonetheless, the department left the second child in the mother’s custody and recommended a program of family maintenance.

The dependency petition relating to mother's first child was set for a contested section 366.26 hearing, which was continued until March 2004. A February 2004 addendum report indicated that mother had begun missing visitation again.

In March 2004, mother filed a section 388 modification petition seeking to have her first child placed with her on family maintenance. Mother's petition indicated that she still had custody of her second child and the department had recommended family maintenance, she had a stable residence and means of support, she had completed a parenting course, and she was again involved in regular psychotherapy. The juvenile court scheduled the modification petition for a contested hearing, which was continued until May, in conjunction with the section 366.26 contested hearing and the next review hearing.

A status review report submitted just prior to the combined hearing in May indicated that mother's visits with her first child continued to be inconsistent.

At the combined hearing in May, the juvenile court first held a jurisdictional hearing in regard to mother's second child. The most recent report indicated that mother had again stopped going to counseling and that the department had lost contact with the father. Nonetheless, the department reiterated its recommendation for family maintenance, and the juvenile court followed that recommendation.

When the juvenile court moved on to the contested hearings regarding mother's first child, mother submitted several photographs showing her living arrangements. A social worker who had worked the case until June 2003 testified that mother and child always interacted well during visits and were affectionate towards each other. A second

social worker, who worked the case during the final year, testified that although visits have continued to go well, the child appeared to want the last couple of visits to end. She opined that removing the child from the prospective adoptive parents now would be detrimental because the child had formed a strong emotional attachment to them.

Mother testified and explained that she had recently missed visits because of confusion about the new visitation schedule, her new baby, and scheduling conflicts. Mother testified that she understood that having two children would be more difficult than one, but she had matured since she had her first child and could handle the added responsibility. In regard to the domestic violence, mother testified that she was taking classes in anger management and was no longer involved with the abusive father of her second child. Mother admitted that she recently quit her job, but was looking for a new job using a program that assisted with employment searches. Mother also admitted that she had been unable to attend counseling lately due to transportation problems, but was getting that worked out as well.

After hearing the testimony and reviewing the various reports, including those relating to mother's second child, the court denied the section 388 modification petition and terminated parental rights under section 366.26. The court selected adoption as the permanent plan.

DISCUSSION

1. Modification Petition

When a modification is requested under section 388, the parent must show that there is new evidence or changed circumstances that make a change of placement in the

best interests of the child. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) The best interests inquiry involves more than a comparison of the parent's household to that of the caretakers; it also requires a comparison of the child's bonds to the parents and the caretakers, and an evaluation of the seriousness of the problem which led to the dependency, the degree to which that problem continues, the reason for its continuation, and the ease with which it can be ameliorated. (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 530-532.)

Modification rulings under section 388 are reviewed for abuse of discretion, which only occurs when the decision "exceeded the bounds of reason" or is "arbitrary, capricious, or patently absurd." (*In re Stephanie M., supra*, 7 Cal.4th at pp. 318-319.) Applying that standard, we see no abuse of discretion that would require reversal.

In regard to the child's bonds, mother initially maintained regular weekly visitation and had a period of extended visitation in late 2002. But, since then, mother has had only limited and irregular visitation. The child continues to be happy to see mother during the visits and mother conducts herself appropriately, but the reports indicate that the child is increasingly anxious to return to his foster home afterwards and is attached to his adoptive parents.

In regard to mother's problems, they clearly stem from youthful instability, a problem that can be corrected by maturation over time, an adequate support network, and diligence. Mother has had plenty of time, but continues to struggle to maintain a support network, and she still has not demonstrated the requisite diligence. Mother started out well with the transitional program, but then attempted suicide just before the six-month

review. Mother made more progress after that and even had successful extended visits, but fell apart once again, quitting the transitional program and moving in with an abusive boyfriend. Mother continues to struggle with domestic violence, unemployment, inconsistent visitation, and a failure to continue with counseling, which is a particularly important aspect of this case given mother's history.

Mother highlights the fact that the department left her second child in her custody on a program of family maintenance. This undoubtedly weighs in her favor, but it is not enough to change our conclusion. After the termination of reunification services, the focus shifts from reunification to the child's need for stability. (*In re Stephanie M.*, *supra*, 7 Cal.4th at p. 317.) Thus, where family maintenance may be appropriate for mother's second child, it is not necessarily appropriate for her first child. The courts can afford to take some time and weather some temporary setbacks in regard to mother's newborn baby; but mother's first child is almost six years old and has spent most of that time in the system--he needs stability now, not further tenuous placements.

2. Termination of Parental Rights

When a parent seeks to avoid the termination of parental rights under section 366.26, subdivision (c)(1)(A), the parent must show a "compelling reason for determining that termination would be detrimental to the child" because "[t]he parents . . . have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(A).) The requisite parent-child relationship is the sort of relationship that normally arises from "attention to the child's needs for physical care, nourishment, comfort, affection and stimulation," not

just a friendship. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) The “benefit” noted in section 366.26, subdivision (c)(1)(A) must “outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer.” (*In re Autumn H.*, at p. 575.)

When reviewing the termination of parental rights under section 366.26, “we presume in favor of the order, considering the evidence in the light most favorable to the prevailing party, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order.” (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 576.) Applying the appropriate presumptions in favor of the ruling below, we see no basis for a reversal.

Initially, it is not clear that any parent-child relationship still exists. The case history detailed above indicates that if any such relationship ever existed, it dissipated following the termination of extended visitation in late 2002. Since then, mother has had only limited and irregular visitation. And no matter how well those visits have gone, the child wants to return to his adoptive parents afterwards.

Even assuming a minimal parent-child relationship, there is no reason to believe that that relationship outweighs the benefit of a stable adoptive placement. As discussed above, mother has spent three years struggling with her own stability, and continues to do so. The child needs a stable adoptive home now, not more delay.

DISPOSITION

The judgment is affirmed.

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/s/ McKinster
J.

We concur:

/s/ Hollenhorst
Acting P.J.
/s/ Richli
J.